

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 96-95

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Plattsmouth, Nebraska, and Osceola,
Iowa)

RM-8787

**NOTICE OF PROPOSED RULE MAKING
AND
ORDER TO SHOW CAUSE**

Adopted: April 8, 1996; Released: April 25, 1996

Comment Date: June 17, 1996

Reply Comment Date: July 2, 1996

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Platte Broadcasting Company, Inc. ("petitioner"), requesting the substitution of Channel 295C3 for Channel 295A at Plattsmouth, Nebraska, and the modification of Station KOTD-FM's license to specify operation on the higher class channel. To accommodate the allotment at Plattsmouth, petitioner also requests the substitution of Channel 296C2 for Channel 295C2 at Osceola, Iowa, and the modification of Station KJJC's license to specify the alternate Class C2 channel. Petitioner states that it will apply for the channel, if allotted.

2. Petitioner states that the allotment of Channel 295C3 to Plattsmouth will provide the community with its first wide-coverage area FM service. In addition, it will enable Station KOTD-FM to increase the population it services from its present 460,728 persons within a 2,510 square kilometer area to 618,873 persons within a 4,746 square kilometer area.

Technical Summary

3. Channel 295C3 can be allotted to Plattsmouth in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.4 kilometers (11.4 miles) northeast to avoid a short-spacing to Station KTPK, Channel 295C, Topeka, Kansas, and to accommodate petitioner's desired transmitter site. Channel 296C2 can be allotted to Osceola and used at Station KJJC's presently licensed transmitter site.¹

4. We believe petitioner's proposal warrants consideration since the allotment of Channel 295C3 to Plattsmouth can provide the community with its first wide-coverage area FM service and enable Station KOTD-FM to expand its coverage area. As requested, we also propose to modify Station KOTD-FM's license to specify the higher class channel. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Plattsmouth or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. In addition, we shall direct an *Order to Show Cause* to the licensee of Station KJJC at Osceola, Iowa, as to why its license should not be modified to specify operation on Channel 296C2 in lieu of Channel 295C2.

5. Whenever an existing licensee or permittee is ordered to change frequency to accommodate a new channel allotment, Commission policy requires the benefitting party, or parties, to reimburse the affected station for the costs incurred. See *Circleville, Ohio*, 8 FCC 2d 159 (1967). Petitioner has stated its willingness to reimburse the licensee of Station KJJC for the reasonable costs associated with moving to Channel 296C2.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Osceola, Iowa	295C2	296C2
Plattsmouth, Nebraska	295A	295C3

7. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Lifestyle Communications Corporation, licensee of Station KJJC, Osceola, Iowa, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 296C2 as proposed herein instead of the present Channel 295C2.

8. Pursuant to Section 1.87 of the Commission's Rules, Lifestyle Communications Corporation may, not later than **June 17, 1996**, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Lifestyle Communications Corporation to furnish additional information. If Lifestyle Communications Corporation raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Lifestyle Communications Corporation will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

¹ The coordinates for Channel 295C3 at Plattsmouth are 41-09-22 North Latitude and 95-47-03 West Longitude. The co-

ordinates for Channel 296C2 at Osceola are 41-01-34; 93-51-43.

9. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the licensee of Station KJJC, as follows: Lifestyle Communications Corporation, P.O. Box 464, Osceola, Iowa 50213.

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before **June 17, 1996**, and reply comments on or before **July 2, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Richard J. Hayes, Jr., Esq.
13809 Black Meadow Road
Greenwood Plantation
Spotsylvania, Virginia 22553
(Counsel to petitioner)

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate

of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.